

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

8-10-16
04:59 PM

Application of California American Water Company (U210W) for Authorization to Increase Its Revenues for Water Service by \$34,559,200 or 16.29% in the year 2018 , by \$8,478,500 or 3.43% In the year 2019, and by \$7,742,600 or 3.03% in The year 2020.

A.16-07-002
(Filed July 1, 2016)

**PROTEST OF THE
MARK WEST AREA COMMUNITY SERVICES COMMITTEE
AND
THE CALIFORNIA WATER RIGHTS ASSOCIATION
OF THE
FILING OF APPLICATION A.16-07-002
BY
CALIFORNIA AMERICAN WATER COMPANY (U210W)
TO INCREASE REVENUES IN EACH OF ITS DISTRICTS STATEWIDE**

James M. Boulter
Member: Mark West Area
Community Services Committee
133 Eton Court
Santa Rosa, CA 95403
(707) 546-3097
jboulter@comcast.net

Doris A. Fodge
Member: California Water
Rights Association
P.O. Box 278853
Sacramento, CA 95827
(916) 717-3836
dorisfodge@att.net

August 10, 2016

I. INTRODUCTION

Pursuant to Rule 2.6 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), the Mark West Area Community Services Committee (MWACSC) files this protest to Application A.16-07-002 of California American Water Company (Cal-Am) for authority to increase its revenues for water service in all of its California Districts.

II RATE INCREASE-DECLINING SALES

As stated in the application, on a company aggregate basis, one of the main drivers of the rate increase is declining sales of \$13.7 million.¹

There has been a significant reduction in consumption driven by several factors, these are:

1. A major recession which caused numerous home foreclosures, business closures and job losses.
2. A multi-year drought and a statewide campaign to conserve water.
3. The high cost of water especially in areas served by investor-owned utilities as compared to areas served by publicly-owned utilities.

Despite these factors, Cal-Am has not been adversely affected by the reduction in consumption, nor has any other class A water company. That is because in 2008 the Commission authorized all class A water companies to implement conservation rates and conservation Programs.

In conjunction with the conservation rates and conservation programs, the class A water companies were authorized to implement so called "decoupling mechanisms". These mechanisms consisted of a Water Revenue Adjustment Mechanism (WRAM) and a Modified Cost Balancing Account (MCBA).

¹ Application A.16-07-002, II NECESSITY FOR GENERAL RATE RELIEF, Paragraph 3, page 8

The WRAM tracks the difference between the projected consumption and the actual consumption. The MCBA tracks the projected cost of purchased water, purchased power and pump taxes as compared to the actual cost of those items.

These programs were stated to be “pilot programs”² of short duration. In some of the Decisions adopting WRAM/MCBA mechanisms, a period of two years was suggested. Decision D.08-02-036 stated “*The conservation rate design settlements will remain in effect until the company’s next rate case.*”³ A rate case usually establishes rates for a three-year period.

While these programs were stated to be “pilot programs” of limited duration, they routinely have been extended into each succeeding rate case for each class A water company since their inception. Having been implemented originally in 2009, they are now in their seventh year of operation. At present, there is no indication from the Commission that there will be an end to the programs in the near future.

In their rate case A.13-07-002, Cal-Am included Special Request No. 26⁴ requesting authority to remove the pilot program designation. After initially opposing removal of the pilot program designation, the Office of Ratepayer Advocates (ORA) agreed to the request in the settlement agreement.⁵ The Settlement Agreement, in turn, was adopted by the Commission in decision D.15-04-007.⁶

The WRAM/MCBA accounts are now a permanent part of the revenue stream of Cal-Am. While decision D.15-04-007 applies only to Cal-Am, it is very likely that the other water companies will seek to make the accounts permanent in their respective rate cases.

In their testimony for rate case A.10-07-007, ORA made the following comment about the WRAM/MCBA accounts:

² Ibid. 3.2, Terms of the Settlement. Page 6

³ Decision D.08-02-036, 1. Background and summary, page 3

⁴ Special Requests are requests that are outside the scope of a normal rate case but are being included and adjudicated in rate cases.

⁵ A.13-07-002 Amended Partial Settlement Agreement between California-American Water Company, City of Pacific Grove, Las Palmas Wastewater Committee, Monterey Peninsula Water Management District and the Office of Ratepayer Advocates on Revenue Issues in the General Rate Case, 21.1 Special Requests, 21.27 Special Request #26, Remove the “Pilot” Designation for CAW’s Conservation Programs, page 153.

⁶ Decision D.15-04-007 Dated April 9, 2015, 4., Settled Issued (sic) Approved by the Decision, 4.7, Special requests, page 18

“The WRAM/MCBA is an experimental tool, and it has broad reach that goes beyond its intended purpose as stated in the decisions that authorized it. It protects the company from all reductions in revenue as a result of reduced sales, and forces ratepayers to pay for all of those lost revenues without showing that the reduction in sales is due to the company’s conservation efforts instead of external forces such as weather or economic changes,”⁷

Of course the utilities want to keep the WRAM/MCBA accounts because they are protected from a reduction in sales regardless of the cause for the reduction in sales.

The WRAM/MCBA accounts have also proven to be very lucrative for the utilities. The below table shows the WRAM/MCBA balances each year in Cal-Am’s Larkfield District (approximately 2400 connections). The WRAM/MCBA balances are amortized by a surcharge on customer’s bills.

WRAM/MCBA AMORTIZATION TABLE
LARKFIELD DISTRICT
CALIFORNIA AMERICAN WATER COMPANY

Number	Advice Letter No	Balances as of 12/31	Amount/Yr.
1	835	2009	\$435,533
2	888	2010	\$586,634
3	940	2011	\$510,777
4	1035	2012	\$144,162
5	1073	2013	\$327,966
6	1072-B	2014	\$417,832
7	1117	2015	\$539,796
Total to date			\$2,962,700

When these “decoupling mechanisms” were concocted, the Commission employed a very creative interpretation of their own rules.

Standard Practice U-27-W does permit “expense offsets” and defines an expense offset as: “An expense offset is a change in rates that allows a utility to pass on to the customers changes in certain costs that are considered to be beyond the utility’s control and are in the

⁷ A.10-07-007 DRA Ex 10, DRA Testimony on Rate design and Special Requests #s 5,6,10,28 and 29 of California American Water Company for Larkfield, Toro Service area in Monterey, Los Angeles County, San Diego County, Ventura County Districts; Chapter 4: Special Request 6: Continuation of Previously Approved WRAMs and MCBAs,

public interest to allow the utility to recover. Offsets track both increases and decreases in costs.”⁸

SP U-27-W is very explicit about the categories of expenses that are eligible to be offset. These include, for all water and sewer utilities:⁹

- a. Purchased Power (electricity or natural gas that the utility buys from an energy company).
- b. Purchased water.
- c. Groundwater extraction charges (pump taxes).

In authorizing the utilities to implement the WRAM/MCBA accounts, the Commission has authorized the utilities to characterize their own failure to adequately project water consumption as an expense offset over which the utility has no control.

That is not a realistic characterization. The utility has total control of the water consumption projection.

Standard Practice U-27-W also explains the retroactive ratemaking doctrine with the statement: *“The retroactive ratemaking doctrine prohibits the Commission from authorizing or requiring a utility to adjust current rates to make up for past errors in projections. If a utility includes an estimate of certain costs in its rates and subsequently finds out that the estimate was too low, it cannot adjust future rates to recoup past losses.”*¹⁰

Yet, that is exactly what the WRAM/MCBA accounts do. The accounts allow the utility to adjust future rates to recoup past claimed losses resulting from their own failure to correctly project consumption.

These “decoupling mechanisms” were originally stated to be “pilot programs” of short duration (two to three years).¹¹ Yet they have been routinely extended, without change, into the next succeeding rate case over a period of seven years.

⁸ SP U-27-W, B-Definitions, 5.Expense Offset, page 3

⁹ Ibid., Memo Accounts, page 3

¹⁰ SP U-27-W, footnote 2 at the bottom of page 2

¹¹ D.08-11-023

There are not many explanations for repeatedly imposing this travesty upon ratepayers when the adverse impact upon ratepayers is well known and well documented.

Cal-Am is now requesting authority to increase rates due, in part, to a reduction in consumption.

CONCLUSION

In order to prevent charging ratepayers twice for the same reduction in consumption the WRAM/MCBA decoupling mechanisms must be discontinued.

III SPECIAL REQUESTS

Cal-Am has been including “special requests” in their recent rate case applications. Special requests are requests that do not conform to the normal rate case proceeding or to the rate case plan, and most often involve a change in rules, such as a different method of calculating interest or the consolidation of districts.

In application A.10-07-007, Cal-Am included 36 special requests. In application A.13-07-002, Cal-Am included another 33 special requests.

DRA¹² protested the filing of rate case A.10-07-007 with 36 special requests that had been included in the application.¹³ This was an unprecedented application that covered all of Cal-Am’s statewide districts. DRA stated that they faced sufficient challenges in effectively reviewing a General Rate Case application of this size without being required to address 36 special requests.

The Mark West Area Community Services Committee agreed with DRA and so stated in its protest of the filing of application A.13-07-002.¹⁴

These special requests are an undue burden upon the limited resources of ORA. Ratepayers have a right to expect that their interests will receive the undivided attention of ORA

¹² The name of The Division of Ratepayer Advocates (DRA) has since been changed to the Office of Ratepayer Advocates (ORA)

¹³ Application A.10-07-007, Protest of the Office of Ratepayer Advocates to the filing of application A.10-07-007, III Issues, p 7 - 11

¹⁴ Protest of the Mark West Area Community Services Committee to the filing of Application A.13-07-002, II Application page 2

without the need to devote time, personnel and limited resources to issues that rightfully belong in their own separate proceeding.

When rule changes are included in a rate case, the changed rules apply only to the utility that filed the rate case and its ratepayers and not to the other similar utilities and their ratepayers. That fact constitutes a clear violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and of Article I, Section 7 of the Constitution of the State of California.

CONCLUSION

When rules are changed they should be changed in accordance with Section 1708.5 of the Public Utilities Code¹⁵ and with Rule 6.3 of the Commission's Rules of Practice and Procedure¹⁶. **In that way, all utilities would be subjected to the same rules at all times, and all ratepayers would be subjected to the same rules.**

IV SPECIAL REQUEST NO. 13

Cal-Am is requesting massive consolidations involving districts in all three of its California regions. This is an expected consequence of decision D.14-10-047.

Consolidation of the Larkfield District with the Sacramento District has been included in general rate cases filed by Cal-Am since purchasing all of the water assets of Citizen's Utilities Company in California and five other states in 2002.

In 1992, DRA and the large water utilities jointly developed "Guidelines for Combining of Water Utility Districts for Ratemaking and Public Utilities Commission Reporting Purposes".¹⁷

The guidelines established four criteria to be considered when evaluating proposed consolidations: **proximity, rate comparability, similarity of supply and operations**. The guidelines also stated that districts should not be combined for the express purpose of subsidization.¹⁸

¹⁵ Public Utilities Code 1708.5

¹⁶ CPUC Rules of Practice and Procedure, Rule 6.3

¹⁷ A07-01-036-039, Opening brief of the Division of Ratepayer Advocates, V. SPECIAL REQUEST #3- RATE CONSOLIDATION, PP 27-43

¹⁸ Ibid.

Cal-Am has on four occasions requested authority to consolidate its Larkfield District with its Sacramento District.

1. Consolidation of the Larkfield District with the Sacramento District was first proposed in application A.02-09-030; A.02-09-031; A.02-09-032; A.02-09-033. The proposal was denied because the two districts did not meet the Commission's guidelines for consolidating Districts.¹⁹
2. Consolidation was again proposed in A.04-04-041. Administrative Law Judge Christine Walwyn ordered Cal-Am to submit a new application for consolidation which was done on August 11, 2004 in application A.04-08-013. Again the proposal was denied because the two districts did not meet the Commission's guidelines for consolidating districts.²⁰
3. The proposal was next introduced in application A.07-01-036 – 039. It was again denied because the two districts did not meet the Commission's guidelines for consolidation of Districts²¹. In its opening brief in rate case A.07-01-036 – 039 the Division of Ratepayer Advocates submitted a very powerful argument against consolidation.²²
4. In application A.13-07-002, Cal-Am included 33 Special Requests. Special Request No 14 was again a request to consolidate its Larkfield District with its Sacramento District for ratemaking purposes. At the Prehearing Conference held in San Francisco on September 17, 2013, Administrative Law Judge W. Anthony Colbert refused to include Special Request No. 14 in the scoping memo because the issue had been adjudicated in the previous rate cases.²³

In its protest of the filing of rate case A.13-07-002, ORA argued that Cal-Am appeared to be using special requests as a mechanism to request authorization for matters that the Commission had already denied.²⁴

ORA also contended that Cal-Am should not use its application generally, and its Special Requests in particular, to request authorization for matters already decided by the Commission unless there was a change in circumstances justifying the renewed request. In

¹⁹ Decision D.04-05-023, p37 - 42

²⁰ Decision D.05-09-020 p3, p14-17

²¹ Decision D.08-05-018, p3, p32-40

²² A.07-01-036 – 039, CPUC01-#286173-v1-A0701036_DRA_Opening Brief. Pdf; V. Special Request #3-RATE CONSOLIDATION, pp27 - 42

²³ Application A.13-07-002, Scoping Memo, 3.1 "Special Requests", p5

²⁴ ORA protest of Application A.13-07-002 page 6

such an event, Cal-Am should specifically identify the prior Commission decisions on the issue and the changed circumstances that justify re-examination of the prior Commission decision.²⁵

What has changed is the issuance of decision D.14-10-047.

Decision D.14-10-047 includes the ill-advised decision to eliminate the 1992 guidelines for consolidating districts, in effect eliminating all controls on consolidation. This unfortunate decision has emboldened Cal-Am to aggressively pursue what we believe is their long range agenda of **A SINGLE STATE-WIDE WATER RATE**.

The current rate case includes requests for authorization to consolidate all of the smaller systems in Monterey County into one district and to consolidate the fixed costs for the Los Angeles County, San Diego County and Ventura County Districts for ratemaking purposes.

The Southern Region consolidation request is massive and would introduce numerous subsidy situations because of the various taxes, fees and charges imposed by the various local governmental entities encompassed by the consolidation.

Decision D.14-10-047 requires that all proposals to consolidate districts, address the public interest benefits that are achieved in light of the (1) proximity, (2) rate comparability, (3) water supply, and (4) operation of the districts that are proposed for consolidation.²⁶

Decision D.14-10-047 also states that: *“Other public interest factors may include, but are not limited to, balancing investment, conservation, water quality, impacts on low income customers, general affordability and duration of any subsidies resulting from consolidation.”*²⁷(Emphasis added)

There are several existing massive consolidations in the Cal-Am water system such as, Sacramento, Los Angeles and Monterey. Some of these consolidations have been in existence for several years. Some were already in existence when American Water Works, Co., Inc. bought the water assets of Citizens Utilities Co. All existing consolidations should

²⁵ Ibid.

²⁶ D.14-10-047, Findings of Fact, page 17.

²⁷ Ibid.

be thoroughly examined in light of Decision D.14-10-047 and any subsidy situations that have outlived their usefulness should be eliminated.

CONCLUSION

The correct course of action is to remove all Special Requests from the scope of this rate case and to instruct the utility to file a motion to modify rules as required by Section 1708.5 of the Public Utilities Code and by Rule 6.3 of the Commission's Rules of Practice and Procedure.

V. ATTORNEY'S FEES

Historically, Cal-Am has used the law firm of Steefel, Levitt and Weiss to represent them in rate cases.

In rate case A.04-04-040, A. 04-04-041 and A.04-08-013, Leonard G. Weiss, Lori Anne Dolqueist and Katheryn A. Fugere, all associates of Steefel Levitt and Weiss were listed as attorneys for Cal-Am.²⁸

Before the next rate case was filed in 2007, Steefel, Levitt and Weiss sold their law practice to Manatt, Phelps and Phillips, a nationwide law firm.

In rate case A.07-01-036-039, attorneys representing Cal-Am are shown to be Leonard G. Weiss, Lori Anne Dolqueist and Sarah E. Leeper, all associates of Manatt, Phelps and Philips.²⁹

The next rate case, A.09-01-013, lists Manatt, Phelps and Phillips associates Lori Anne Dolqueist, and Sarah E. Leeper as attorneys representing Cal-Am.

Dolqueist and Leeper, associates of Manatt, Phelps and Phillips are also shown as attorneys for Cal-Am in rate case A10-07-007.³⁰

At some time after rate case A.10-07-007 was concluded, Cal-Am hired Sarah E. Leeper as their chief counsel and developed a complete law office around her.

In application A.11-09-016, Sarah E. Leeper is shown as the attorney for Cal-Am.³¹

²⁸ Application A.04-04-040 and A.04-04-041 title sheet.

²⁹ Application A.07-01-036-039, title sheet.

³⁰ Application A.10-07-007, title sheet.

³¹ Application A.11-09-016, title sheet.

In application a.13-07-002, Sarah E. Leeper, Nicholas A. Subias, and Javier E. Naranjo are listed as attorneys for Cal-Am and are also shown as employees of Cal-Am.³²

Application 14-07-005 lists Sarah E. Leeper of California American Water Company, alone as the attorney representing Cal-Am.³³

This application lists Sarah E. Leeper and Nicholas A. Subias of California American Water Company and **Lori Anne Dolqueist, an associate of Nossman LLP**, as attorneys representing Cal-Am.³⁴

We estimate the billing rate of Lori Anne Dolqueist to be in the range of \$500 - \$600 per hour, perhaps even more.

There is no doubt that ratepayers are paying for Cal-Am's law office at 555 Montgomery Street in San Francisco, including salaries, rent, utilities and all other costs. The office includes experienced attorneys who in past rate cases have proven to be capable of representing the utility in all regulatory matters.

Therefore, it is not necessary to hire additional expensive outside attorneys to represent Cal-Am. Any charges by Lori Anne Dolqueist, Nossman LLP or any other outside law firm should be approved only as a shareholder expense, not as a ratepayer expense.

Respectfully Submitted

/S/ James M. Boulter

James M. Boulter
Member: Mark West Area
Community Services Committee
133 Eton Court
Santa Rosa, CA 95403
(707) 546-3097
jboulter@comcast.net

³² Application A13-07-002, title sheet.

³³ Application A14-07-005, title sheet

³⁴ Application A.16-07-002, title sheet.